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HOUSE BILL 266

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Jim R. Trujillo

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; UPDATING AND CLARIFYING PROVISIONS OF THE  
TAX ADMINISTRATION ACT; EXTENDING THE REQUIREMENTS FOR  
ELECTRONIC PAYMENT TO ADDITIONAL PERSONS; CHANGING THE  
REPORTING AND PAYMENT INTERVAL FOR CERTAIN TAXPAYERS; REVISING  
THE RETENTION PERIOD FOR INSTALLMENT AGREEMENTS; PROVIDING FOR  
ELECTRONIC SERVICE OF CERTAIN LEVIES; PROVIDING A GRACE PERIOD  
FOR INTEREST IN CASE OF CERTAIN DISASTERS; RECONCILING MULTIPLE  
AMENDMENTS MADE TO THE SAME SECTION OF LAW IN LAWS 2007.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-1-4 NMSA 1978 (being Laws 1965,  
Chapter 248, Section 10, as amended) is amended to read:

"7-1-4. INVESTIGATIVE AUTHORITY AND POWERS.--

A. For the purpose of establishing or determining  
the extent of the liability of any person for any tax, for the

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1 purpose of collecting any tax, for the purpose of enforcing any  
2 statute administered under the provisions of the Tax  
3 Administration Act or for the purpose of investigating possible  
4 criminal violations of the revenue laws of this state,  
5 including fraud or other crimes that may affect the taxes due  
6 to the state, the secretary or the secretary's delegate is  
7 authorized to examine equipment and to examine and require the  
8 production of any pertinent records, books, information or  
9 evidence, to require the presence of any person and to require  
10 that person to testify under oath concerning the subject matter  
11 of the inquiry and to make a permanent record of the  
12 proceedings.

13 B. As a means for accomplishing the matters  
14 referred to in Subsection A of this section, the secretary is  
15 hereby invested with the power to issue subpoenas and  
16 summonses. In no case shall a subpoena or summons be made  
17 returnable less than ten days from the date of service.

18 C. Any subpoena or summons issued by the secretary  
19 shall state with reasonable certainty the nature of the  
20 evidence required to be produced, the time and place of the  
21 hearing, the nature of the inquiry or investigation and the  
22 consequences of failure to obey the subpoena or summons; shall  
23 bear the seal of the department; and shall be attested by the  
24 secretary.

25 D. After service of a subpoena or summons upon the

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1 person, if any person neglects or refuses to appear in response  
2 to the summons or neglects or refuses to produce records or  
3 other evidence or to allow the inspection of equipment in  
4 response to the subpoena or neglects or refuses to give  
5 testimony as required, the department may invoke the aid of the  
6 court in the enforcement of the subpoena or summons. In  
7 appropriate cases, the court shall issue its order requiring  
8 the person to appear and testify or produce books or records  
9 and may, upon failure of the person to comply with the order,  
10 punish the person for contempt.

11 E. If a person, the extent of whose tax liability  
12 is being established, or that person's agent, nominee or other  
13 person acting under the direction or control of that person,  
14 files an action with the court to quash a subpoena or summons  
15 issued by the secretary or that court pursuant to this section,  
16 the running of the period of limitations pursuant to Sections  
17 7-1-18 and 7-1-19 NMSA 1978 or Section 30-1-8 NMSA 1978 with  
18 respect to the tax liability under investigation shall be  
19 suspended for the period during which a proceeding and related  
20 appeals regarding the enforcement of the subpoena or summons is  
21 pending."

22 Section 2. Section 7-1-10 NMSA 1978 (being Laws 1965,  
23 Chapter 248, Section 15, as amended) is amended to read:

24 "7-1-10. RECORDS REQUIRED BY STATUTE--TAXPAYER  
25 RECORDS--ACCOUNTING METHODS--REPORTING METHODS--INFORMATION

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1 RETURNS.--

2 A. Every person required by the provisions of any  
3 statute administered by the department to keep records and  
4 documents and every taxpayer shall maintain books of account or  
5 other records in a manner that will permit the accurate  
6 computation of state taxes or provide information required by  
7 the statute under which the person is required to keep records.

8 B. Methods of accounting shall be consistent for  
9 the same business. A taxpayer engaged in more than one  
10 business may use a different method of accounting for each  
11 business.

12 C. Prior to changing the method of accounting in  
13 keeping books and records for tax purposes, a taxpayer, other  
14 than a corporation or other entity taxed as a corporation for  
15 federal income tax purposes, shall first secure the consent of  
16 the secretary or the secretary's delegate. If consent is not  
17 secured, the department upon audit may require the taxpayer to  
18 compute the amount of tax due on the basis of the accounting  
19 method earlier used.

20 D. Prior to changing the method of reporting taxes,  
21 other than for changes required by law, a taxpayer shall first  
22 secure the consent of the secretary or the secretary's  
23 delegate. Consent shall be granted or withheld pursuant to the  
24 provisions of Section 7-4-19 NMSA 1978. If consent is not  
25 secured, the secretary or the secretary's delegate upon audit

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1 may require the taxpayer to compute the amount of tax due on  
2 the basis of the reporting method earlier used.

3 E. Upon the written application of a taxpayer and  
4 at the sole discretion of the secretary or the secretary's  
5 delegate, the secretary or the secretary's delegate may enter  
6 into an agreement with a taxpayer allowing the taxpayer to  
7 report values, gross receipts, deductions or the value of  
8 property on an estimated basis for gross receipts and  
9 compensating tax, oil and gas severance tax, oil and gas  
10 conservation tax, oil and gas emergency school tax and oil and  
11 gas ad valorem production tax purposes for a limited period of  
12 time not to exceed four years. As used in this section,  
13 "estimated basis" means a methodology that is reasonably  
14 expected to approximate the tax that will be due over the  
15 period of the agreement using summary rather than detail data  
16 or alternate valuation applications or methods, provided that:

17 (1) nothing in this section shall be construed  
18 to require the secretary or the secretary's delegate to enter  
19 into such an agreement; and

20 (2) the agreement must:

21 (a) specify the receipts, deductions or  
22 values to be reported on an estimated basis and the methodology  
23 to be followed by the taxpayer in making the estimates;

24 (b) state the term of the agreement and  
25 the procedures for terminating the agreement prior to its

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1 expiration;

2 (c) be signed by the taxpayer or the  
3 taxpayer's representative and the secretary or the secretary's  
4 delegate; and

5 (d) contain a declaration by the  
6 taxpayer or the taxpayer's representative that all statements  
7 of fact made by the taxpayer or the taxpayer's representative  
8 in the taxpayer's application and the agreement are true and  
9 correct as to every material matter.

10 F. The secretary may, by regulation, require any  
11 person doing business in the state to submit to the department  
12 information reports that are considered reasonable and  
13 necessary for the administration of any provision of law to  
14 which the Tax Administration Act applies."

15 Section 3. Section 7-1-13.1 NMSA 1978 (being Laws 1988,  
16 Chapter 99, Section 3, as amended) is amended to read:

17 "7-1-13.1. METHOD OF PAYMENT OF CERTAIN TAXES DUE.--

18 A. Except as provided in Subsection F of this  
19 section, payment of the taxes, including any applicable  
20 penalties and interest, described in each paragraph [~~(1)~~, ~~(2)~~,  
21 ~~(3)~~ or ~~(4)~~] of this subsection shall be made on or before the  
22 date due in accordance with Subsection [B] C of this section if  
23 the taxpayer's average tax payment for the group of taxes  
24 during the preceding calendar year equaled or exceeded [~~twenty-~~  
25 ~~five thousand dollars (\$25,000)~~] the threshold amount for that

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1 preceding year:

2 (1) Group 1: all taxes due [~~under~~] pursuant  
3 to the Withholding Tax Act, the Gross Receipts and Compensating  
4 Tax Act, local option gross receipts tax acts, the Interstate  
5 Telecommunications Gross Receipts Tax Act and the Leased  
6 Vehicle Gross Receipts Tax Act;

7 (2) Group 2: all taxes due [~~under~~] pursuant  
8 to the Oil and Gas Severance Tax Act, the Oil and Gas  
9 Conservation Tax Act, the Oil and Gas Emergency School Tax Act  
10 and the Oil and Gas Ad Valorem Production Tax Act;

11 (3) Group 3: the tax due [~~under~~] pursuant to  
12 the Natural Gas Processors Tax Act; [or]

13 (4) Group 4: all taxes and fees due [~~under~~]  
14 pursuant to the Gasoline Tax Act, the Special Fuels Supplier  
15 Tax Act, [~~and~~] the Petroleum Products Loading Fee Act and the  
16 Alternative Fuel Tax Act; or

17 (5) Group 5: all taxes and fees due pursuant  
18 to the Cigarette Tax Act, the Tobacco Products Tax Act, the  
19 Liquor Excise Tax Act and the Local Liquor Excise Tax Act.

20 B. For taxpayers who have more than one  
21 identification number issued by the department, the average tax  
22 payment for a group of taxes shall be computed by combining the  
23 amounts paid under the several identification numbers for that  
24 group.

25 [~~B.~~] C. Taxpayers who are required to make payment

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1 in accordance with the provisions of this section shall make  
2 payment by one or more of the following means on or before the  
3 due date so that funds are immediately available to the state  
4 on or before the due date:

5 (1) electronic payment; provided that a result  
6 of the payment is that funds are immediately available to the  
7 state of New Mexico on or before the due date;

8 (2) currency of the United States;

9 (3) check drawn on and payable at any New  
10 Mexico financial institution provided that the check is  
11 received by the department at the place and time required by  
12 the department at least one banking day prior to the due date;  
13 or

14 (4) check drawn on and payable at any domestic  
15 non-New Mexico financial institution provided that the check is  
16 received by the department at the time and place required by  
17 the department at least two banking days prior to the due date.

18 [~~C.~~] D. If the taxes required to be paid under this  
19 section are not paid in accordance with Subsection [~~B~~] C of  
20 this section, the payment is not timely and is subject to the  
21 provisions of Sections 7-1-67 and 7-1-69 NMSA 1978.

22 [~~D. For the purposes of~~] E. As used in this  
23 section:

24 (1) "average tax payment" means the total  
25 amount of taxes paid with respect to a group of taxes listed

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1 under Subsection A of this section during a calendar year  
2 divided by the number of months in that calendar year  
3 containing a due date on which the taxpayer was required to pay  
4 one or more taxes in the group;

5 (2) "third-party payer" means a person who has  
6 by contract or other means agreed to remit to the department on  
7 behalf of one or more other persons the amount due of any tax  
8 or fee listed in Subsection A of this section owed by those  
9 other persons; a "third-party payer" is a taxpayer; and

10 (3) "threshold amount" means:

11 (a) for years prior to 2009, twenty-five  
12 thousand dollars (\$25,000);

13 (b) for 2009, twenty thousand dollars  
14 (\$20,000);

15 (c) for 2010, fifteen thousand dollars  
16 (\$15,000); and

17 (d) for 2011 and subsequent years, ten  
18 thousand dollars (\$10,000).

19 F. With respect to taxes and fees, including  
20 applicable penalty and interest, due after December 31, 2008, a  
21 third-party payer must pay in accordance with Paragraph (1) of  
22 Subsection C of this section both its own taxes and fees in all  
23 groups as well as the taxes and fees in all groups being  
24 remitted on behalf of others."

25 Section 4. Section 7-1-15 NMSA 1978 (being Laws 1969,

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1 Chapter 31, Section 1, as amended) is amended to read:

2 "7-1-15. SECRETARY MAY SET TAX REPORTING AND PAYMENT  
3 INTERVALS.--The secretary may, pursuant to regulation, allow  
4 taxpayers with an anticipated tax liability of less than [~~two~~  
5 ~~hundred dollars (\$200)] three hundred dollars (\$300) a month to  
6 report and pay taxes at intervals [~~which~~] that the secretary  
7 may specify. However, unless specifically permitted by law, an  
8 interval shall not exceed six months. The secretary may also  
9 allow direct marketers who have entered into an agreement with  
10 the department to collect and remit compensating tax to report  
11 and pay on a quarterly or semiannual basis."~~

12 Section 5. Section 7-1-21 NMSA 1978 (being Laws 1965,  
13 Chapter 248, Section 23, as amended) is amended to read:

14 "7-1-21. INSTALLMENT PAYMENTS OF TAXES--INSTALLMENT  
15 AGREEMENTS.--

16 A. Whenever justified by the circumstances, the  
17 secretary or the secretary's delegate may enter into a written  
18 agreement with a taxpayer in which the taxpayer admits  
19 conclusive liability for the entire amount of taxes due and  
20 agrees to make monthly installment payments according to the  
21 terms of the agreement, but not for a period longer than sixty  
22 months. No installment agreement shall prevent the accrual of  
23 interest otherwise provided by law.

24 B. The agreement provided for in this section is to  
25 be known as an "installment agreement". If entered into after

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1 a court acquires jurisdiction over the matter, the agreement  
2 shall be part of a stipulated order or judgment disposing of  
3 the case.

4 C. At the time of entering into an installment  
5 agreement, the secretary shall require the affected taxpayer or  
6 person to furnish security for payment of the taxes admitted to  
7 be due according to the terms of the agreement, but if the  
8 taxpayer does not provide security, the secretary shall cause a  
9 notice of lien to be filed in accordance with the provisions of  
10 Section 7-1-38 NMSA 1978, and when so filed it shall constitute  
11 a lien upon all the property or rights to property of the  
12 taxpayer in that county in the same manner as in the case of  
13 the lien provided for in Section 7-1-37 NMSA 1978.

14 D. An installment agreement is conclusive as to  
15 liability for payment of the amount of taxes specified therein  
16 but does not preclude the assessment of any additional tax.

17 E. After entering into the agreement, except in  
18 unusual circumstances [~~as~~] that require the secretary in [~~his~~]  
19 the secretary's discretion to take further action to protect  
20 the interests of the state, no further attempts to enforce  
21 payment of the tax by levy or injunction shall be made;  
22 however, if installment payments are not made on or before the  
23 times specified in the agreement, if any other condition  
24 contained in the agreement is not met or if the taxpayer does  
25 not make payment of all other taxes for which [~~he~~] the taxpayer

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1 becomes liable as they are due, the secretary may proceed to  
2 enforce collection of the tax as if the agreement had not been  
3 made or may proceed, as provided in Section 7-1-54 NMSA 1978,  
4 against the security furnished.

5 F. Records of installment agreements in excess of  
6 one thousand dollars (\$1,000) shall be available for inspection  
7 by the public. The department shall keep the records for a  
8 minimum of [~~three years from the date of~~] one year from the end  
9 of the year in which the installment agreement expires or is  
10 terminated."

11 Section 6. Section 7-1-31 NMSA 1978 (being Laws 1965,  
12 Chapter 248, Section 33, as amended) is amended to read:

13 "7-1-31. SEIZURE OF PROPERTY BY LEVY FOR COLLECTION OF  
14 TAXES--USE OF ELECTRONIC FORMAT.--

15 A. The secretary or secretary's delegate may  
16 proceed to collect tax from a delinquent taxpayer by levy upon  
17 all property or rights to property of [~~such person and the~~  
18 ~~conversion thereof~~] the delinquent taxpayer and proceed to  
19 convert the property or rights to property of the delinquent  
20 taxpayer to money by appropriate means.

21 B. A levy is made by taking possession of property  
22 pursuant to authority contained in a warrant of levy or by the  
23 service, by the secretary or secretary's delegate or any  
24 sheriff, of the warrant upon the taxpayer or other person in  
25 possession of property or rights to property of the taxpayer,

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1 upon the taxpayer's employer or upon any person or depositary  
2 owing or who will owe money to or holding funds of the  
3 taxpayer, ordering ~~him~~ the employer or person to reveal the  
4 extent thereof and surrender it to the secretary or secretary's  
5 delegate forthwith or agree to surrender it or the proceeds  
6 therefrom in the future, but in any case on the terms and  
7 conditions stated in the warrant.

8 C. The department may serve a warrant of levy upon  
9 a financial institution in electronic format."

10 Section 7. Section 7-1-32 NMSA 1978 (being Laws 1965,  
11 Chapter 248, Section 34, as amended) is amended to read:

12 "7-1-32. CONTENTS OF WARRANT OF LEVY.--A warrant of levy  
13 shall:

14 A. bear on its face a statement of the authority  
15 for its service and compelling compliance with its terms, shall  
16 be attested by the secretary and shall bear the seal of the  
17 department; provided that, if the warrant is served in  
18 electronic format, the warrant is not required to bear the seal  
19 and the attestation shall be made by electronic signature;

20 B. identify the taxpayer whose liability for taxes  
21 is sought to be enforced, the amount thereof and the date or  
22 approximate date on which the tax became due;

23 C. order the person on whom it is served to reveal  
24 the amount of property or rights to property in ~~his own~~ the  
25 person's possession that belong to the taxpayer and the extent

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1 of [~~his own~~] the person's interest therein and to reveal the  
2 amount and kind of property or rights to property of the  
3 taxpayer that are, to the best of [~~his~~] the person's knowledge,  
4 in the possession of others;

5 D. order the person on whom it is served to  
6 surrender the property forthwith but may allow [~~him~~] the person  
7 to agree in writing to surrender the property or the proceeds  
8 therefrom on a certain date in the future when the taxpayer's  
9 right to it would otherwise mature;

10 E. order the employer of the taxpayer to surrender  
11 wages or salary of the taxpayer in excess of the amount exempt  
12 under Section 7-1-36 NMSA 1978 owed by the employer to the  
13 taxpayer at the time of service of the levy and [~~which~~] that  
14 may become [~~owing~~] owed by the employer to the taxpayer  
15 subsequent to the service of the levy until the full amount of  
16 the liability stated on the levy is satisfied or until notified  
17 by the secretary or the secretary's delegate;

18 F. state on its face the penalties for willful  
19 failure by any person upon whom it is served to comply with its  
20 terms; and

21 G. state that the state of New Mexico claims a lien  
22 for the entire amount of tax asserted to be due, including  
23 applicable interest and penalties."

24 Section 8. Section 7-1-67 NMSA 1978 (being Laws 1965,  
25 Chapter 248, Section 68, as amended by Laws 2007, Chapter 45,  
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1 Section 2 and by Laws 2007, Chapter 262, Section 4) is amended  
2 to read:

3 "7-1-67. INTEREST ON DEFICIENCIES.--

4 A. If a tax imposed is not paid on or before the  
5 day on which it becomes due, interest shall be paid to the  
6 state on that amount from the first day following the day on  
7 which the tax becomes due, without regard to any extension of  
8 time or installment agreement, until it is paid, except that:

9 (1) for income tax imposed on a member of the  
10 armed services of the United States serving in a combat zone  
11 under orders of the president of the United States, interest  
12 shall accrue only for the period beginning the day after any  
13 applicable extended due date if the tax is not paid;

14 (2) if the amount of interest due at the time  
15 payment is made is less than one dollar (\$1.00), then no  
16 interest shall be due;

17 (3) if demand is made for payment of a tax,  
18 including accrued interest, and if the tax is paid within ten  
19 days after the date of the demand, no interest on the amount  
20 paid shall be imposed for the period after the date of the  
21 demand;

22 (4) if a managed audit is completed by the  
23 taxpayer on or before the date required, as provided in the  
24 agreement for the managed audit, and payment of any tax found  
25 to be due is made in full within one hundred eighty days of the

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1 date the secretary has mailed or delivered an assessment for  
2 the tax to the taxpayer, no interest shall be due on the  
3 assessed tax;

4 (5) when, as the result of an audit or a  
5 managed audit, an overpayment of a tax is credited against an  
6 underpayment of tax pursuant to Section 7-1-29 NMSA 1978,  
7 interest shall accrue from the date the tax was due until the  
8 tax is deemed paid;

9 (6) if the department does not issue an  
10 assessment for the tax program and period within the time  
11 provided in Subsection D of Section 7-1-11.2 NMSA 1978,  
12 interest shall be paid from the first day following the day on  
13 which the tax becomes due until the tax is paid, excluding the  
14 period between either:

15 (a) the one hundred eightieth day after  
16 giving a notice of outstanding records or books of account and  
17 the date of the assessment of the tax; or

18 (b) the ninetieth day after the  
19 expiration of the additional time requested by the taxpayer to  
20 comply, if such request was granted, and the date of the  
21 assessment of the tax; [~~and~~]

22 (7) if the taxpayer was not provided with  
23 proper notices as required in Section 7-1-11.2 NMSA 1978,  
24 interest shall be paid from the first day following the day on  
25 which the tax becomes due until the tax is paid, excluding the

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1 period between one hundred eighty days prior to the date of  
2 assessment and the date of assessment; and

3 (8) in the case of a taxpayer determined by  
4 the secretary to be affected by a disaster declared by the  
5 governor or determined by the United States secretary of the  
6 treasury to be affected by a presidentially declared disaster,  
7 as defined in 26 U.S.C. 1033(h)(3), or a terroristic or  
8 military action as defined in 26 U.S.C. 692(c)(2), the  
9 secretary may declare that interest shall accrue only after the  
10 expiration of a period, which may be up to one year from the  
11 date of the secretary's declaration.

12 B. Interest due to the state under Subsection A or  
13 D of this section shall be at the rate established for  
14 individuals pursuant to Section 6621 of the Internal Revenue  
15 Code, excluding the special rule in Section 6621(b)(2)(B) of  
16 that code, computed on a daily basis; provided that if a  
17 different rate is specified by a compact or other interstate  
18 agreement to which New Mexico is a party, that rate shall be  
19 applied to amounts due under the compact or other agreement.

20 C. Nothing in this section shall be construed to  
21 impose interest on interest or interest on the amount of any  
22 penalty.

23 D. If any tax required to be paid in accordance  
24 with Section 7-1-13.1 NMSA 1978 is not paid in the manner  
25 required by that section, interest shall be paid to the state

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1 on the amount required to be paid in accordance with Section  
2 7-1-13.1 NMSA 1978. If interest is due under this subsection  
3 and is also due under Subsection A of this section, interest  
4 shall be due and collected only pursuant to Subsection A of  
5 this section."

6 Section 9. Section 7-1-68 NMSA 1978 (being Laws 1965,  
7 Chapter 248, Section 69, as amended) is amended to read:

8 "7-1-68. INTEREST ON OVERPAYMENTS.--

9 A. As provided in this section, interest shall be  
10 allowed and paid on the amount of tax overpaid by a person that  
11 is subsequently refunded or credited to that person.

12 B. Interest on overpayments of tax shall accrue and  
13 be paid at the rate established for [~~individuals~~] taxpayers  
14 other than corporations pursuant to Section 6621 of the  
15 Internal Revenue Code, excluding the special rule in Section  
16 6621(b)(2)(B) of that code, computed on a daily basis; provided  
17 that if a different rate is specified by a compact or other  
18 interstate agreement to which New Mexico is a party, that rate  
19 shall apply to amounts due under the compact or other  
20 agreement.

21 C. Unless otherwise provided by this section,  
22 interest on an overpayment not arising from an assessment by  
23 the department shall be paid from the date of the claim for  
24 refund until a date preceding by not more than thirty days the  
25 date of the credit or refund to any person; interest on an

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1 overpayment arising from an assessment by the department shall  
2 be paid from the date of overpayment until a date preceding by  
3 not more than thirty days the date of the credit or refund to  
4 any person.

5 D. No interest shall be allowed or paid with  
6 respect to an amount credited or refunded if:

7 (1) the amount of interest due is less than  
8 one dollar (\$1.00);

9 (2) the credit or refund is made within:

10 (a) fifty-five days of the date of the  
11 claim for refund of income tax, pursuant to either the Income  
12 Tax Act or the Corporate Income and Franchise Tax Act for the  
13 tax year immediately preceding the tax year in which the claim  
14 is made;

15 (b) sixty days of the date of the claim  
16 for refund of any tax not provided for in another subparagraph  
17 of this paragraph;

18 [~~(b)~~] (c) seventy-five days of the date  
19 of the claim for refund of gasoline tax to users of gasoline  
20 off the highways; [~~or~~

21 ~~(e)~~] (d) one hundred twenty days of the  
22 date of the claim for refund of tax imposed pursuant to the  
23 Resources Excise Tax Act, the Severance Tax Act, the Oil and  
24 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,  
25 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad

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1 Valorem Production Tax Act, the Natural Gas Processors Tax Act  
2 or the Oil and Gas Production Equipment Ad Valorem Tax Act; or

3 [~~(3)~~ the credit or refund is made within]

4 (e) one hundred twenty days of the date  
5 of the claim for refund of income tax, pursuant to the Income  
6 Tax Act or the Corporate Income and Franchise Tax Act, for any  
7 tax year more than one year prior to the year in which the  
8 claim is made;

9 [~~(4)~~] (3) Sections 6611(f) and 6611(g) of the  
10 Internal Revenue Code, as those sections may be amended or  
11 renumbered, prohibit payment of interest for federal income tax  
12 purposes;

13 [~~(5)~~ the credit or refund is made within sixty  
14 days of the date of the claim for refund of any tax other than  
15 income tax;

16 ~~(6)~~] (4) the credit results from overpayments  
17 found in an audit of multiple reporting periods and applied to  
18 underpayments found in that audit or refunded as a net  
19 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA  
20 1978;

21 [~~(7)~~] (5) the department applies the credit or  
22 refund to an intercept program, to the taxpayer's estimated  
23 payment prior to the due date for the estimated payment or to  
24 offset prior liabilities of the taxpayer pursuant to Subsection  
25 E of Section 7-1-29 NMSA 1978; or

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1                    [~~(8)~~] (6) the credit or refund results from  
2 overpayments the department finds pursuant to Subsection F of  
3 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the  
4 taxpayer on the return.

5                    E. Nothing in this section shall be construed to  
6 require the payment of interest upon interest."

7                    Section 10. Section 7-1-69 NMSA 1978 (being Laws 1965,  
8 Chapter 248, Section 70, as amended) is amended to read:

9                    "7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A  
10 RETURN.--

11                    A. Except as provided in Subsection C of this  
12 section, in the case of failure due to negligence or disregard  
13 of department rules and regulations, but without intent to  
14 evade or defeat a tax, to pay when due the amount of tax  
15 required to be paid, to pay in accordance with the provisions  
16 of Section 7-1-13.1 NMSA 1978 when required to do so or to file  
17 by the date required a return regardless of whether a tax is  
18 due, there shall be added to the amount assessed a penalty in  
19 an amount equal to the greater of:

20                    (1) two percent per month or any fraction of a  
21 month from the date the tax was due multiplied by the amount of  
22 tax due but not paid, not to exceed twenty percent of the tax  
23 due but not paid;

24                    (2) two percent per month or any fraction of a  
25 month from the date the return was required to be filed

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1 multiplied by the tax liability established in the late return,  
2 not to exceed twenty percent of the tax liability established  
3 in the late return; or

4 (3) a minimum of [~~five dollars (\$5.00)~~]  
5 twenty-five dollars (\$25.00), but the [~~five-dollar (\$5.00)~~]  
6 twenty-five-dollar (\$25.00) minimum penalty shall not apply to  
7 taxes levied under the Income Tax Act or taxes administered by  
8 the department pursuant to Subsection B of Section 7-1-2 NMSA  
9 1978.

10 B. No penalty shall be assessed against a taxpayer  
11 if the failure to pay an amount of tax when due results from a  
12 mistake of law made in good faith and on reasonable grounds.

13 C. If a different penalty is specified in a compact  
14 or other interstate agreement to which New Mexico is a party,  
15 the penalty provided in the compact or other interstate  
16 agreement shall be applied to amounts due under the compact or  
17 other interstate agreement at the rate and in the manner  
18 prescribed by the compact or other interstate agreement.

19 D. In the case of failure, with willful intent to  
20 evade or defeat a tax, to pay when due the amount of tax  
21 required to be paid, there shall be added to the amount fifty  
22 percent of the tax or a minimum of [~~twenty-five dollars~~  
23 ~~(\$25.00)~~] fifty dollars (\$50.00), whichever is greater, as  
24 penalty.

25 E. If demand is made for payment of a tax,

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1 including penalty imposed pursuant to this section, and if the  
2 tax is paid within ten days after the date of such demand, no  
3 penalty shall be imposed for the period after the date of the  
4 demand with respect to the amount paid.

5 F. If a taxpayer makes electronic payment of a tax  
6 but the payment does not include all of the information  
7 required by the department pursuant to the provisions of  
8 Section 7-1-13.1 NMSA 1978 and if the department does not  
9 receive the required information within five business days from  
10 the later of the date a request by the department for that  
11 information is received by the taxpayer or the due date, the  
12 taxpayer shall be subject to a penalty of two percent per month  
13 or any fraction of a month from the fifth day following the  
14 date the request is received. If a penalty is imposed under  
15 Subsection A of this section with respect to the same  
16 transaction for the same period, no penalty shall be imposed  
17 under this subsection.

18 G. No penalty shall be imposed on:

19 (1) tax due in excess of tax paid in  
20 accordance with an approved estimated basis pursuant to Section  
21 7-1-10 NMSA 1978;

22 (2) tax due as the result of a managed audit;  
23 or

24 (3) tax that is deemed paid by crediting  
25 overpayments found in an audit or managed audit of multiple

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periods pursuant to Section 7-1-29 NMSA 1978.

H. Nothing in this section shall be construed to impose a penalty on the amount of interest due or a penalty on a penalty."

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.